PD-0878-17
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 3/15/2018 3:29 PM
Accepted 3/19/2018 9:33 AM
DEANA WILLIAMSON
CLERK

PD-0878-17

FILED
COURT OF CRIMINAL APPEALS
3/19/2018
DEANA WILLIAMSON, CLERK

IN THE COURT OF CRIMIAL APPEALS

AUSTIN, TEXAS

THE STATE OF TEXAS,
Appellant

vs.

JUAN MARTINEZ, JR.,
Appellee

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
COURT OF APPEALS, THIRTEENTH DISTRICT OF TEXAS
CAUSE NUMBER 13-15-00592-CR

BRIEF FOR THE APPELLANT
THE STATE OF TEXAS

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UNITED STATES CASE

STATE CASES

NO. PD-0878-17

THE STATE OF TEXAS, Appellant	§	IN THE COURT OF
	§	CRIMINAL APPEALS
v.	§	
JUAN MARTINEZ, JR., Appellee	§	AUSTIN, TEXAS

BRIEF FOR THE APPELANT
THE STATE OF TEXAS

To the Honorable Court of Criminal Appeals:

Now comes, the State of Texas, by and through Edward F. Shaughnessy, III, and Attorney-at-Law, designated attorney for the District Attorney for the 156th Judicial District and files this brief, on behalf of the appellant, in cause number PD-0878-17. On November 13, 2014 the appellee was indicted by a Bee County grand jury for the offense of Intoxication Manslaughter. Prior to trial the appellee file a written "Defendant's Motion to Suppress". (C.R.-8) Following an evidentiary hearing on the appellee's motion, the trial Court granted the motion. (C.R.-11) The trial Court thereafter entered written findings of fact and conclusions of law on the issue raised in the appellee's motion. (C.R.-8) Following that ruling the State of Texas filed a timely notice of appeal. An appeal was pursued to the Thirteenth Court of Appeals.

On July 13, 2017, the Court of Appeals, Thirteenth District of Texas affirmed the ruling of the trial Court in a published opinion authored by Justice Hinojosa. *State v. Martinez, 534 S.W.3d 97 (Tex. App.-Corpus Christi, 2017, pet. grntd).* The State of Texas, acting through the undersigned, subsequently filed a Petition for Discretionary Review with this Court. This Court granted that petition on September 17, 2014. This brief is filed on behalf of the appellant, the State of Texas.

APPELLANT'S GROUND FOR REVIEW

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT PROPERLY GRANTED THE APPELLEE'S MOTION TO SUPPRESS EVIDENCE THAT REVEALED THE RESULTS OF TESTING OF A SAMPLE OF THE APPELLEE'S BLOOD

SUMMARY OF APPLICABLE FACTS

As previously noted the appellee caused to be filed a written motion to suppress evidence prior to the onset of trial. The trial Court thereafter conducted an evidentiary hearing on that motion. The facts pertinent to the issue before this Court were sufficiently summarized in the opinion of the lower Court. Those facts consist of the following:

> The following evidence was adduced at the suppression hearing. Martinez was transported by ambulance to a hospital following his involvement in a traffic accident In Beeville, Texas. A nurse drew Martinez's blood for medical purposes. Martinez subsequently told the hospital staff that he did not want them to perform any testing of his blood, and he refused to provide a urine sample. Martinez then removed his I.V. and monitors and left the hospital.
>
> John Richard Quiroga, a Department of Public Safety (DPS) Trooper went to the hospital to investigate the traffic accident. Officer Quiroga was unable to speak to Martines who had left the hospital moments before his arrival, but he directed hospital staff to preserve Martinez's blood sample. The following day, Sergeant Daniel J. Keene served a grand jury subpoena on the hospital and obtained four vials of Martinez's blood and his medical records. Sergeant Keene forwarded two of the vials to a DPS crime laboratory for testing.

At the conclusion of the hearing on the motion to suppress the trial Court made the following findings of fact and conclusions of law: 1) the seizure of the blood from the hospital and the subsequent testing thereof constituted a search and seizure under the Fourth Amendment; 2) the seizure of the blood under the auspices of the grand jury subpoena constituted a valid seizure; 3) the testing of the blood was conducted without a valid search warrant and without a valid exception to the warrant requirement; 4) the results of any testing on the blood was inadmissible "at this time".

ARGUMENT AND AUTHORITIES

STANDARD OF REVIEW

When called upon to review the ruling of a trial Court on a motion to suppress evidence, a reviewing Court is required to employ the abuse of discretion analysis. *State v. Cortez, ___ S.W.3d ___ (No. PD-0228-17, Tex. Crim. App. January 24, 2018); State v. Rodriguez, 521 S.W.3d 1 (Tex. Crim. App. 2017); State v. Story, 445 S.W.3d 729 (Tex. Crim. App. 2014).* That review utilizes a bifurcated standard of review in which a reviewing Court is required to give almost total deference to the historical facts supported by the record and thereafter review *de novo,* the trial Court's application of the law to the facts that are not controlled by the trial Court's role in passing on the credibility of the witness testimony. *State v. Cortez, supra*. The ruling of a trial Court on a motion

to suppress should be reversed on appeal only if it demonstrated to be arbitrary, unreasonable, or "outside the zone of reasonable disagreement". *State v. Cortez, supra.* Express factual findings made by the trial Court must be upheld if supported by the record. *Valtierra v. State, 310 S.W.3d 442 (Tex. Crim. App. 2010)*

APPELLANT'S ARGUMENT IN THE LOWER COURT.

In asserting that the trial Court erred in granting the appellee's motion to suppress, the State urged in the Court below that the trial Court failed to adequately account for the holdings of this Court in *State v. Huse, 491 S.W.3d 833 (Tex. Crim. App. 2016)* and *State v. Hardy, 963 S.W.2d 516 (Tex. Crim. App. 1997).*

ANAYSIS OF THE LOWER COURT

The Court below rejected the arguments advanced by the State in seeking to have the ruling of the trial Court reversed. The lower Court reasoned as follows:

> We disagree with the State that *Huse and Hardy* are controlling. Unlike those cases, the State did not just seek Martinez's medical records, but also obtained Martinez's blood sample and then conducted its own analysis of the sample. Martinez's blood was never analyzed by hospital staff for medical purposes, and his medical records contained no information concerning his blood alcohol content.

The lower Court found that the precedent from this Court that was applicable, to the issue presented by appellee's motion to suppress, was *State v. Comeaux, 818 S.W.2d 46 (Tex. Crim. App. 1991).* In *Comeaux* this Court held, in a plurality opinion, that a suspect maintained a legitimate expectation privacy in a blood sample, voluntarily given to members of a hospital staff, so as to require that law enforcement to obtain a search warrant, or demonstrate exigent circumstances, so as to avoid the suppression of the blood analysis conducted subsequently conducted by law enforcement personnel. *Comeaux v. State, supra.* The Court below went on to hold that, after a *de novo* review of the ruling of the trial Court, the warrantless search of the appellee's blood sample violated his rights as guaranteed by the Fourth Amendment to the United States Constitution and upheld the order of the trial Court. *State v. Martinez, supra.*

ARGUMENT AND AUTHORITIES IN SUPPORT OF THE APPELLANT'S GROUND FOR REVIEW

The issue that is presented to this Court, in the context of the appellee's motion to suppress, and the trial Court's subsequent granting thereof, is whether or not this Court's plurality opinion in *Comeaux* justifies the suppression of the blood testing administered by the DPS lab on the grounds that the sample of the appellee's blood was properly seized by law enforcement personnel, but thereafter illegally searched by that entity due to

the absence of a valid search warrant. The State would submit that this Court should rule that the holding of *Comeaux* is inapplicable in the instant case because it fails to properly account for Supreme Court precedent and this Court's prior holdings regarding what constitutes a reasonable expectation of privacy in an item searched, for purposes of exclusion from evidence, under the terms of the Fourth Amendment to the United States Constitution.

The instant case does not appear to turn on whether or not the appellee claimed a "property interest" in the blood test results obtained by the DPS lab; consequently the issue appears to require the resolution of whether the appellee maintained a legitimate expectation of privacy in the blood testing results obtained by DPS following the proper seizure of the appellee's blood. See: *Ford v. State, 477 S.W.3d 321 (Tex. Crim. App. 2016).* Under the "privacy" theory of standing for purposes of analysis under the Fourth Amendment an accused has "standing" to contest the legality of a search or seizure if 1) he has a subjective expectation of privacy in the object searched, and 2) society is prepared to recognize that expectation as reasonable or legitimate. *State v. Granville, 423 S.W.3d 399 (Tex. Crim. App. 2014).* This Court has held that a criminal accused lacks a legitimate expectation of privacy in blood testing results if those results were not the result of extraction of the blood by law enforcement nor the subject of testing by law enforcement following the initial seizure by a private entity. *State v. Hardy, supra*. This Court has also concluded that the medical records maintained, by

that private entity, as a consequence of the tests results obtained in that fashion, were not subject to suppression due to the absence of a privacy interest that society was willing to recognize. *State v. Huse, supra*.

The issue that remains unanswered is presented by the facts presented herein. That is: if the initial seizure of the blood sample is properly conducted by a private entity, can that sample subsequently be analyzed by law enforcement personnel, without a search warrant, on the basis that the need for a search warrant is obviated by the absence of a "privacy" interest in those results, that can be considered one that society is prepared to recognize as reasonable or legitimate. The State would submit that, under the circumstances presented herein, any expectation of "privacy" entertained by the appellee was not one that society is prepared to accept as reasonable or legitimate, hence the appellee lacked the requisite "standing" to complain about the results obtained by the DPS lab. The rationale behind that conclusion is set forth by the Supreme Court of the United States in the case of *United States v. Jacobsen, 466 U.S. 109, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984)* wherein it is stated:

> It is well-settled that when an individual reveals private information to another, he assumes the risk that his confident will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information. Once frustration of the original expectation of privacy occurs, the Fourth Amendment does not prohibit governmental use of the now-nonprivate information. *Jacobsen, supra @ 1658.*

The record herein is devoid of any evidence that the appellee harbored a subjective expectation of privacy in the blood sample that he abandoned at the hospital, nor is there any reason to find that society would accept such an expectation as reasonable or legitimate. Consequently, a search warrant was not required to conduct a search of the vials of blood surrendered by the appellee to hospital personnel, and thereafter obtained by the Department of Public Safety for purposes of analysis. See: *Oles v. State, 993 S.W.2d 103 (Tex. Crim. App. 1999).*

A *de novo* review of the ruling of the trial Court reveals it to be an abuse of discretion that should be reversed by this Court.

CONCLUSION AND PRAYER

Wherefore premises considered the appellee, the State of Texas would respectfully request that this Court reverse the judgment of the Thirteenth Court of Appeals, reverse the order of the trial Court remand the matter to the trial Court for trial.

Respectfully submitted,

Edward F. Shaughnessy

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CERTIFICATE OF SERVICE

I, Edward F. Shaughnessy, III, attorney for the appellant hereby certify that a true and correct copy of the instant brief was delivered to Patrick Overman, 331A N. Washington Street, Beeville Texas, 78102, counsel for the appellee, by use of the United States Postal Service on the _16__ day of March, 2018.

Edward F. Shaughnessy

_____

Edward F. Shaughnessy, III

CERTIFICATE OF COMPLIANCE

I, Edward F. Shaughnessy, III, hereby certify to this Court that the instant document contains 2,345 words.

Edward F. Shaughnessy

_____

Edward F. Shaughnessy, III